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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,073	04/16/2004	Paul A. Lindberg	83714.86249	9970
24335 7590 01/24/2008 WARNER NORCROSS & JUDD LLP 900 FIFTH THIRD CENTER 111 LYON STREET, N.W. GRAND RAPIDS, MI 49503-2487			EXAMINER CHIN, PAUL T	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/826,073	LINDBERG, PAUL A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2,4,5,7-13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4,5,7-13 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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**DETAILED ACTION**

1. In view of the appeal brief filed on October 19, 2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
Saul Rodriguez

***Claim Objections***

2. Claims 7 and 13 are objected to because of the following informalities: claims 7 and 13, line 1, the depending claim "1" should be changed to -- 2 --. Note that claim 1 has been canceled by the applicant. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 2 and 4-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "a device for lifting/manipulating landscaping and other like materials" in line 1. The recitation of "lifting/manipulating" is vague and indefinite because it is unclear as to whether applicant is claiming either "lifting" or "manipulating". Moreover, the recitation of "other like materials" is unclear because applicant fails to point out what are the other materials.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 2, 4, and 5, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Furnia et al. (2,832,635).

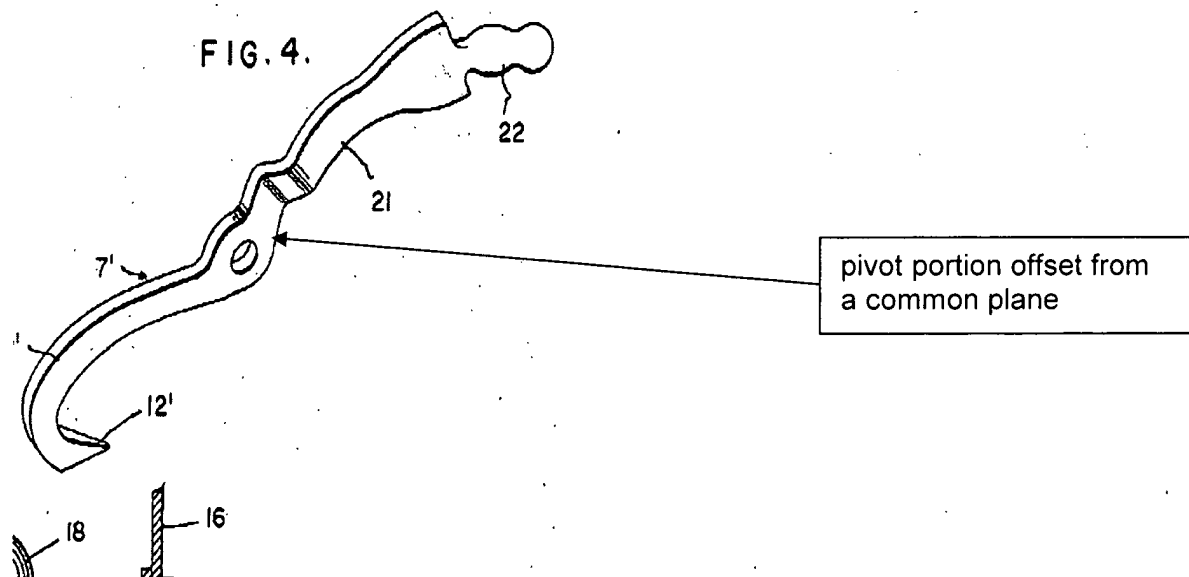
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Furnia et al. (2,832,635) discloses a device for lifting an object (13), comprising:

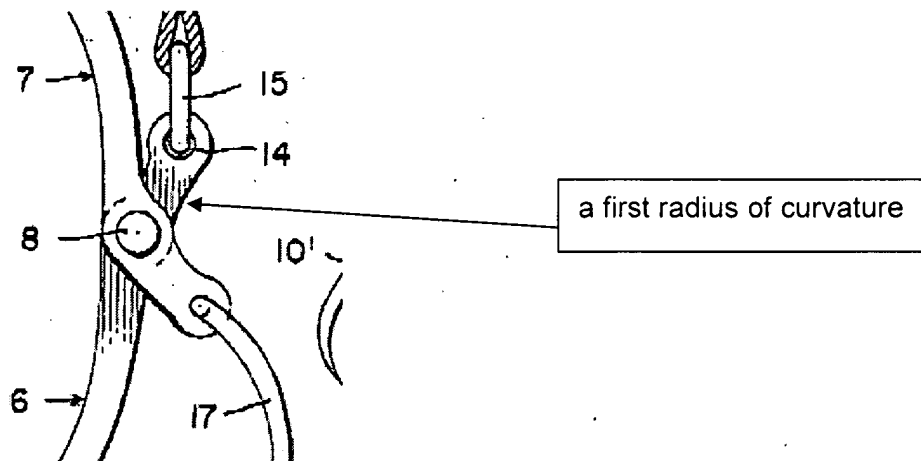
a first arm (6) having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a common plane;

a second arm (7) having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common plane wherein at least one of said pivot portion of said first arm and said pivot portion of said second arm is offset from said common plane (see **Exhibit A**) an amount selected such that said upper portion and said lower portion of said first arm and said upper portion and said lower portion of said second arm extend in said common plane; and wherein at least a portion of said upper portion of said first arm follows a first radius of curvature having a center on an exterior side of said first arm (see **Exhibit B**).

**Exhibit A**



**Exhibit B**



Re claim 4, figure 3 teaches each arm (6, 7) having an outer radius of curvature on an upper portion and an inner radius of curvature on a lower portion.

Re claim 5, Furnia et al. (2,832,635) teaches a pivot pin (8).

7. Claims 2, 4, 5, and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Rytell (1,514,863).

Rytell (1,514,863) discloses a device for manipulating materials, comprising:

a first arm (1) having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a common plane;

a second arm (2) having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common

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wherein at least one of said pivot portion of said first arm and said pivot portion of said second arm is offset from said common plane (see Fig. 2) an amount selected such that said upper portion and said lower portion of said first arm and said upper portion and said lower portion of said second arm extend in said common plane; and wherein at least a portion of said upper portion of said first arm follows a first radius of curvature having a center on an exterior side of said first arm (see Fig. 1)

Re claim 4, figure 1 teaches each arm (1,2) having an outer radius of curvature on an upper portion and an inner radius of curvature on a lower portion.

Re claim 5, figure 1 teaches a pivot pin (3).

Re claim 7, figure 2 shows each jaw being perpendicularly attached to each arm wherein each jaw having a plurality of teeth.

#### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furnia et al. (2,832,635) in view of either Rotollo (2,526,085) or Miller (3,572,808).

Furnia et al. (2,832,635), as presented above, does not show a handle being mounted on each arm. However, Rotollo (2,526,085) teaches a handle (see Fig. 1) being attached to an arm (9) for controlling the arm. Miller (3,572,808) also teaches a handle (28, 38) being attached to an arm (22, 32) for controlling the arm. Thus, it would have

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been obvious to those skilled in the art to provide a handle to be attached to each arm (6, 7) of Furnia et al. (2,832,635) as taught by either Rotollo (2,526,085) or Miller (3,572,808) to control or manipulate the device. Also note that it would have been obvious to those skilled in the art to provide a handle to be attached perpendicular to the arm to control the device away from the path of each arm preventing from injury.

10. Claims 8-12 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rytell (1,514,863) in view of Eckert (1,468,344) (see PTO-892).

The modified Rytell (1,514,863), as present above, does not clearly show that the teeth are oriented along a radius of curvature on each arm. However, Eckert (1,468,344) teaches each arm (10) having a curved gripper (14) which has a plurality of teeth to grip a circular shape object. Thus, it would have been obvious to those skilled in the art to provide a curved gripper on the gripping jaw of Rytell (1,514,863) as taught by Eckert (1,468,344) to firmly grip a rounded object.

Re claims 11 and 12, figure 2 of Rytell (1,514,863) shows reinforced plates between each arm and each gripping jaw.

11. Claims 2, 4, 5, and 7, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (Des. 245,972) in view of Furnia (2,932,635).

Kifer (Des. 245,972) shows a device for lifting an object, comprising:

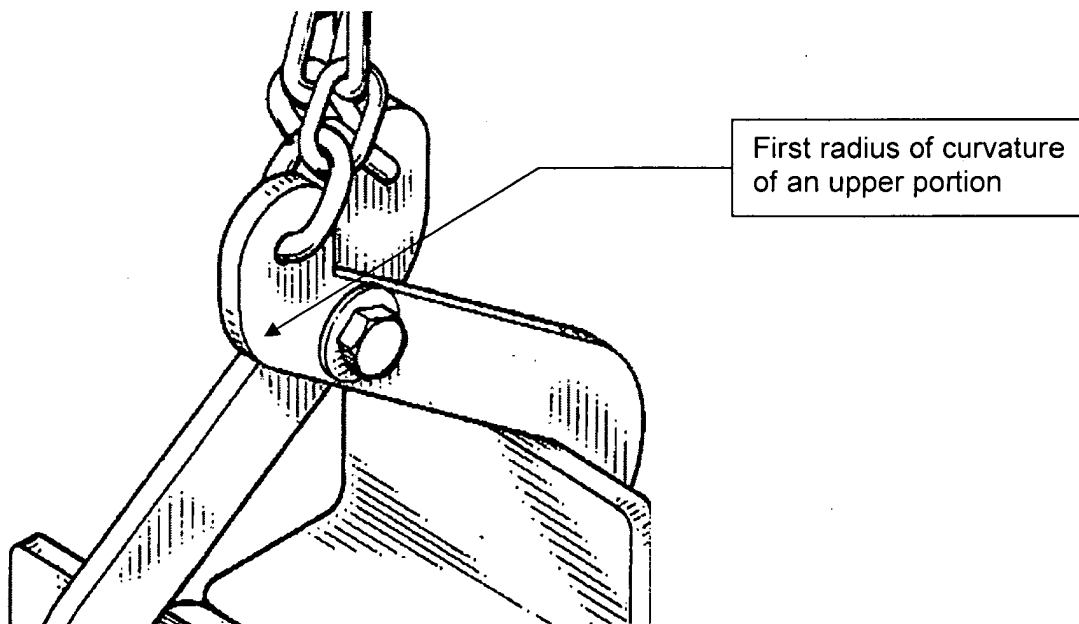
a first arm having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a common plane;



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a second arm having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common plane, and a portion of said upper portion of said first arm follows a first radius of curvature having a center on an exterior side of said first arm (See Exhibit C).

Kifer (Des. 245,972) does not show a pivot portion of one of the arms being offset from a common plane. However, Furnia (2,932,635) teaches an arm having a pivot portion being offset from a common plane of the arm. Thus, it would have been obvious to those skilled in the art to modify a pivot portion of one arm of the Kifer (Des. 245,972) to be slightly offset as taught by Furnia (2,932,635) to restraint the pivoting movement of the arms.

**Exhibit C**

Re claims 4 and 5, the modified Kifer (Des. 245,972) shows a pivot and each arm having curvatures as recited in the claims.

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Re claim 7, each jaw being perpendicularly attached to each arm wherein each jaw having a plurality of teeth.

12. Claims 8-10 and 16-19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (Des. 245,972) and Furnia (2,932,635), as applied to claims 2 and 7, and further in view of Eckert (1,468,344).

The modified Kifer (Des. 245,972), as present above, does not clearly show that the teeth are oriented along a radius of curvature on each arm. However, Eckert (1,468,344) teaches each arm (10) having a curved gripper (14) which has a plurality of teeth to grip a circular shape object. Thus, it would have been obvious to those skilled in the art to provide a curved gripper on the gripping jaw of Kifer (Des. 245,972) as taught by Eckert (1,468,344) to firmly grip a rounded object.

Re claim 16, Kifer (Des. 245,972) shows a device for lifting an object, comprising:

a first arm having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a common plane;

a second arm having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common plane, and a portion of said upper portion of said first arm follows a first radius of curvature having a center on an exterior side of said first arm (See Exhibit C). figure 1 of Kifer (Des. 245,972), as presented above, further shows a lift ring (the most

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top ring), a shackle, and a gripping jaw. The modified Kifer (Des. 245,972), as present above, does not clearly show that the teeth are oriented along a radius of curvature on each arm. However, Eckert (1,468,344) teaches each arm (10) having a curved gripper (14) which has a plurality of teeth to grip a circular shape object. Thus, it would have been obvious to those skilled in the art to provide a curved gripper on the gripping jaw of Kifer (Des. 245,972) as taught by Eckert (1,468,344) to firmly grip a rounded object.

Re claim 19, figures 1 and 2 of Kifer (Des. 245,972) substantially shows each arm having a S-shape.

13. Claims 11-13 and 20, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (Des. 245,972) and Furnia (2,932,635), as applied to claims 2 and 7-10, and further in view of Miller (3,572,808).

Re claims 13 and 20, the modified Kifer (Des. 245,972), as present above, does not show a handle being attached to each arm. However, Miller (3,572,808) teaches each handle (28,38) being attached to each arm (22,32). Thus, it would have been obvious to those skilled in the art to provide a handle on each arm of Kifer (Des. 245,972) as taught by Miller (3,572,808) to control the movement of the arms. Also note that it would have been obvious to those skilled in the art to provide a handle to be attached perpendicular to the arm to control the device away from the path of each arm preventing from injury.

Re claims 11 and 12, figure 1 of the modified Kifer (Des. 245,972), as present above, shows each jaw is being welded on each arm for permanent attachment, but does not show a pair of reinforced plates to provide between the arm and the leg. However, Miller (3,572,808) teaches two plates (G,F) being connected by a reinforced plate (R) (see Fig. 2) to strengthen the structure of the plates. Thus, it would have been obvious to those

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skilled in the art to provide a reinforced plate between the arm and the gripper of Kifer (Des. 245,972) as taught by Miller (3,572,808) to provide a reliable gripping device.

14. Claims 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (3,572,808) in view of Eckert (1,468,344).

Miller (3,572,808) discloses a first arm (22), a second arm (32), a pivot joint (54), a lift ring (40), a shackle (42, 44) on each arm and the ring, a jaw (24, 34) being perpendicularly attached to each arm, and a plurality of teeth. Miller (3,572,808) does not show a plurality of teeth being oriented along a curve. However, Eckert (1,468,344) teaches each arm (10) having show a plurality of teeth (16, 16) being oriented along a curve (15). Thus, , it would have been obvious to those skilled in the art to provide a curved jaw with teeth on each arm of Miller (3,572,808) as taught by Eckert (1,468,344) to firmly grip a round object.

Re claim 20, figure 1 and 2 show a handle (28, 38) being attached to each arm. Note that it would have been obvious to those skilled in the art to provide a handle to be attached perpendicular to the arm of Miller (3,572,808) to control the device away from the path of each arm preventing injury to a user.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 2,4,5,7-13, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571)272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
SAUL RODRIGUEZ  
SUPERVISORY PATENT EXAMINER

PAUL T. CHIN  
Examiner  
Art Unit 3652

